Annually, about Rs. 4 lakhs were deposited from the Judicial Department in the State sub-treasuries. These judicial deposits bore no interest and the Government were utilising it for current expenditure and deriving other advantages therefrom. Equity demanded that interest should be allowed on these deposits. A cheque for the refund of certain money from the Neyyattinkara sub-treasury was dishonored on the ground that the requisition to pay was not in the form of an application. The Government who ordered the immediate disbursement of the money had not taken any action against the sub-treasury officer concerned though they had promised to do so.

The sites of court-houses and the trees standing thereon should be placed under the control of the courts. No action was taken by the Government against those responsible for the collection of green-leaf manure from the trees in the Neyyattinkara cutcherry compound on the pretext of a *Kuthakapattam* lease.

The judicial administration of the State was unsatisfactory and matters were getting worse during the last few years. The High Court was not responsible to anybody and was above criticism. The subordinate courts did not respect the High Court, nor did the people. There were no conscientious and independent officers. Each Munsiff and Judge had a patron in one or other of the High Court Judges and could do anything with impunity. There was no uniformity in High Court decisions. The High Court had never in the past fallen to such a low level. People had lost all respect for the High Court. Eminent judges remarkable for their honesty, character, courage and independence adorned the High Court Bench in the old days. No judge should be appointed on the ground of mere seniority. All sorts of rumours were current about the action of the High Court refusing to grant bail to the accused in the Jenmabhumi case. There were many irregularities in the disposal of cases. The courts wielded an incalculable influence on the lives, properties and destinies of the people. Courts existed for the people and not for the sake of the officers. The circular which required that a minimum of 40 cases should be disposed of in a month led to oppression. There was no uniform policy in the matter of recruitment and promotion. Appointments to Munsiffs' and Judges' places should not be made from briefless vakils or inefficient officers. Temporary Munsiffs recruited from such classes caused untold hardship in the disposal of old and contested cases transferred to their files from the principal courts. Able men who disposed of old and contested cases should be preferred; industry, efficiency and honesty were not now given adequate encouragement. Discontent was generated by appointing vakils as judges overlooking the claims of deserving Munsiffs. A change in the policy of recruitment would inevitably lead to the early clearing of arrears and prevent their accumulation in the future.

DEWAN'S REPLY: Mr. Sankaranarayana Pillai, in so far you have dealt with the subject of delays in the disposal of suits and your general remarks about courts, the answer I gave to the last speaker covers your representation. I do not propose to convert the law courts into Savings Banks to allow interest on deposits. For the rest, your remarks have been listened to.

33. Judicial Administration.

MR. K. M. GOPALAN NAIR (*Member, Municipal Council, Trivandrum*) considered that the present system of administration of civil and criminal justice required overhauling. Corruption amongst the clerks and process-servers of the courts was increasing. Under Rules 159 and 167 of the *Civil Courts' Guide*, the parties had to deal constantly with the clerks and tipping was widely prevalent. The low pay of the subordinates and the want of frequent inspection and vigilant control by the superior officers were responsible for this. The delays in framing issues, recording evidence and disposing of suits should form the subject of careful examination by the Laws Delays Committee. The Committee should also fix the period within which judgment should be delivered after the final hearing of the case. No adequate provision existed to expedite the execution of warrants of arrest on judgment-debtors absconding while under *mosul*. There were instances in

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which calendar cases relating to such escapes were pending in the Trivandrum Town Magistrate's court for months. The copyists were irresponsible and allowed the Records to be handled by strangers. The Trivandrum courts stood in need of additional copyists. The discretion of munsiffs in the matter of issuing commission orders was in some cases not exercised properly, their own dependants being often selected. The depositions of witnesses were not as a rule read out to them as required by the law. Orders should be issued for the circular on the subject being strictly followed. The execution of maintenance petitions in summary cases filed under Section 366 of the *Criminal Procedure Code* was a slow process in several First Class Magistrates' Courts, the clerks in charge of the petitions insisting on payment of a certain percentage of the money got in execution. Surprise visits of the High Court Judges would have a salutory effect. The present system of inspections during vacations was more in the nature of a holiday trip and was ineffective, as their clerks practically did all the inspection work. The same practice was adopted also by the District Magistrates. Frequent surprise inspections would be effective in enforcing the regular attendance of the presiding officers in the lower courts, prevent accumulation of arrears in respect of miscellaneous petitions and office work, check corruption and oblige the officers to write judgments before pronouncing them, not to hold court on holidays, and not to protract trials unnecessarily. The mode of serving processes on parties and witnesses was far from satisfactory. Personal service should be insisted on except under unavoidable circumstances.

The disparity between the pay of Magistrates and police officers led to numerous evils affecting the course of justice. The magistracy should be placed under the High Court. The future recruitment of magistrates should be confined to the bar, efficiency being the sole test.

The practice of police officers who investigated the cases also conducting the prosecutions should be deprecated.

Under-trial prisoners should not be kept in police lock-ups as it was inexpedient to place the investigating officers in custody of them.

There were heavy arrears in the Trivandrum First Class Magistrate's Court in spite of the present Magistrate's best efforts. The work was unduly heavy; and it was imperative that the Taluk First Class Magistrate's Court which was in existence till 1092 should be revived.

The Second Grade Pleaders practising in the lower courts were not allowed now to appear before the District Court. They might be encouraged by appointing them as public prosecutors in the place of the Prosecuting Inspectors of Police.

Either the Manager or the Deputy Registrar in the High Court might be dispensed with.

The rules regarding affidavits should be amended and Munsiff court vakils should be authorised to attest them in as much as head-clerks in Munsiffs' courts were allowed to do so. The affidavits might be dispensed with in certain cases.

The system of nominating judges and presidents of Village Panchayat Courts on communal considerations was open to objection as illiterate men came to be chosen. The president of the Village Panchayat Court and the chairman of the Bench Magistrate's court should never be a practising vakil, but a retired officer of the status of a District Judge or a Division Peishkar. The practice of the same judge trying and disposing of a suit obtaining in Trivandrum might be copied elsewhere. Another Bench Magistrate in the Trivandrum court should in view of the volume of work, also be invested with first class powers. The practice of sending cases filed in the Town Magistrate's court to the Bench Magistrate's court through the District Magistrate led to inordinate delay, to avoid which the chairman of the Bench Magistrate's court should also be authorised to receive complaints. Carriage allowances at least might be given to the presidents of the Village Panchayat Courts in consideration of their honorary and arduous duties. The pay of head-clerks in these courts should be enhanced and only persons with technical and

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academic qualifications should be appointed as head-clerks. The responsible work of issuing summons and other processes and attesting court records should be taken away from the head-clerk and vested in the judges by turns. The staff of the local court required strengthening. The jurisdiction of the courts should be raised from Rs. 50 to Rs. 100.

DEWAN'S REPLY: Mr. Gopalan Nair, all the points which you have raised and the suggestions which you have put forward will be taken up for consideration in consultation with the High Court.

34. Civil Justice

MR. NARAYANARU KRISHNARU (*Member, Jenmi, Trivandrum Division*) enumerated the hardships and inconveniences caused to the litigants in the present working of the civil courts and suggested the following remedies to remove them:—

All courts should invariably insist on the plaintiff furnishing a true copy of the plaint for supply to the defendant. The differences between the real market rates and the *nirak* rates furnished by the taluk offices should be avoided. In cases where the defendant in a civil suit had not accepted the summons fourteen days previously, and, in a small cause suit, seven days previously, the court should, without an application from him, adjourn the case and allow him to put in a written statement. Issues should be framed within a week after the submission of the written statement and when no issues had to be framed, evidence should at once be recorded and the case disposed of within three weeks. An attendance register of the witnesses present each day should be maintained and those whose examination could not be conducted the same day should be relieved. The fee for commissioners should be modified and fixed at first class *batta* and first class mileage for one day. The courts should have full discretion in the matter of appointing commissioners. The officers of the Agricultural Department should be appointed to value trees and other improvements on land, of the Public Works Department to value buildings, *Proverthikars* to do survey work, and persons at the discretion of the court in other matters, such as examination of witnesses, conducting of oath, etc. As instances of tampering with unregistered documents produced, in original, before courts occurred, a copy need alone be kept in the court, the party being required to produce the original when necessary. A statement of the moneys remitted by the parties, attested by the head-clerk, might be furnished from time to time so as to avoid delay, confusion and double payments when decrees were prepared. The production of *chittas* in the case of *Devaswom* and *Brahmaswom* lands on which *tiruppuvarom* is charged should be dispensed with as it would be enough to consult the revenue settlement register kept in the court. An encumbrance certificate was hardly necessary in the case of auction sales for *jenmi's* dues, as next to the Government, the *jenmi* had the prior claim to the land. Notes of hearing should be arranged to be produced as that would be to the advantage of the client and the convenience of the court. The circular enjoining that a minimum of forty cases should be disposed of monthly by munsiffs should be amended so as to require the disposal of 25 contested cases on the merits without giving room for remand or retrial or review. Calendar revision and vakil's fees should be introduced in respect of small causes. Judgments should be delivered on a fixed date not later than a fortnight after the hearing was over, and if that was not done, it should be delivered on a further date to be fixed. Fees should be levied for certificates in respect of vakil's fees. The office copies of the judgments should be got ready and signed chronologically with reference to the date of judgment. The loss sustained by parties on account of mistakes in the decree should be made good to them by the clerk responsible for its preparation or the officer signing it; and parties need not be obliged to furnish copy of the judgment when applying for rectification of errors in a decree. The rule relating to the issue of three notices in respect of applications for copies should be enforced in all the courts and earlier applications should be granted first. In *ex parte* cases, the original document should be destroyed only after expiry of the period of limitation. Encumbrance certificates should be dispensed with or should be prepared by responsible clerks. Action on applications for execution should invariably be taken at least the next day. *Chellans* should be granted on the day of application; the cheque might be in triplicate as of old. The

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